

BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

DEPT. OF TRANSPORTATION
DOCKETS
CE MAY 20 AM 11:15

In the Matter of

Z-BEST, INC.

Respondent

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Docket Number: FMCSA-2002-12346-1
Old Case Number: VA-2002-003-0060

REQUEST FOR HEARING

The Field Administrator for the Federal Motor Carrier Safety Administration ("FMCSA") Eastern Service Center, through his representative, files this Request for Hearing and in support thereof states:

1. On December 12, 2001, a Notice of Claim was issued against Respondent assessing a civil penalty in the amount of \$57,930.00 for violations of the Federal Motor Carrier Safety Regulations ("FMCSR's"). The violations consisted of the following charges:

- a. Violation 1: One (1) Charge of 49 C.F.R. §382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result;
- b. Violation 2: Five (5) Charges of 49 C.F.R. §395.3(b)(2) – Requiring or permitting driver to drive after having been on duty more than 70 hours in 8 consecutive days.

A true and accurate copy of the Notice of Claim is attached hereto and incorporated by reference herein as Exhibit A.

2. Respondent replied in a timely manner, denied all charges and requested a hearing. A true and accurate copy of Respondent's Reply is attached hereto and incorporated by reference herein as Exhibit B.

3. In response to the Notice of Claim, Respondent alleges that there are factual issues

in dispute with regard to each and every violation.

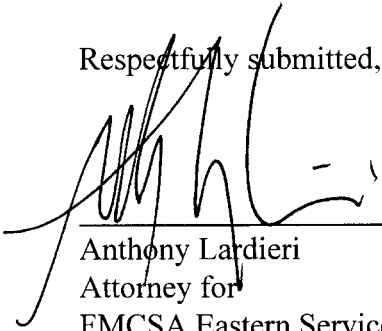
4. The Field Administrator wishes to have this matter scheduled for hearing to resolve the following factual and legal issues:

A. Violation 1: Whether Respondent used driver Christopher L. Jordan to perform safety sensitive functions prior to receiving a negative pre-employment controlled substance test result.

B. Violation 2: Whether the appropriate penalty was assessed for the charges.

WHEREFORE, the Field Administrator, respectfully requests that the Respondent's request for a hearing be granted and this matter be referred for hearing.

Respectfully submitted,



Anthony Lardieri
Attorney for
FMCSA Eastern Service Center
10 S. Howard St., Suite 4000
Baltimore, Maryland 21201
(410) 962-2464

CERTIFICATE OF SERVICE

This is to certify that on the 17th day of May, 2002, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to:

Neil E. McCullagh
Cantor Arkema & Edmonds, P.C.
823 East Main Street
P.O. Box 561
Richmond, VA 23218-0561
Attorney for Respondent

One Copy
Federal Express

Craig Feister
Division Administrator
Federal Motor Carrier Safety Administration
400 North 8th Street, Room 750
Richmond, VA 23240

One Copy
First Class Mail Postage Prepaid

U.S. DOT DOCKETS
400 7th Street, PL 401
Washington, DC 20590


Original
Federal Express

Joseph Muscaro, Field Administrator
Federal Motor Carrier Safety Administration
Eastern Service Center
400 Seventh Street, S.W.
Room 8300
Washington, DC 20590

One Copy
First Class Mail Postage Prepaid

FMCSA Docket Clerk
Eastern Service Center
10 South Howard Street
Suite 4000
Baltimore, MD 21201

One Copy
Hand Delivered


Denise Brown



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration
Eastern Service Center

10 South Howard Street
Suite 4000
Baltimore, MD 21201

Phone: (410) 962-0077
Fax: (410) 962-2273

Certified/ Return Receipt Requested

December 12, 2001

Emory Lucy, President
Z Best Inc
852 Planters Road
Lawrenceville, VA 23868

NOTICE OF CLAIM¹ -- Violations of 49 CFR § 382.301(a); 395.3(b)(2).

CIVIL PENALTY: \$57,930

CaseNumber : VA-02-003-US0060

Dear Mr. Lucy:

A safety compliance review was conducted at your offices in Lawrenceville, VA on November 15, 2001. The purpose of this review was to determine your compliance with the Federal Motor Carrier Safety Regulations (FMCSR), the Federal Hazardous Materials Regulations (HMR) and the Federal Motor Carrier Commercial Regulations (FMCCR).

As a result of this review, violations were discovered. This letter constitutes a Notice of Claim by the United States Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) against Z Best Inc for the amount of \$57,930.

Unless settled or otherwise resolved in a manner set forth below, the FMCSA can recover these penalties, with interest and costs, in a civil action brought in a United States District Court. Additional collection efforts may include, but are not limited to: Internal Revenue Service offsets against tax refunds and the referral to and the use of collection agencies to collect penalties. Also, under 49 CFR §§ 386.83 and 386.84, once a final order has been issued, the FMCSA may prohibit Z Best Inc from operating in interstate commerce until the civil penalty is paid in full and, if applicable, your FMCSA registration will be suspended.

1) A Notice of Claim is the official charging document used by the Federal Motor Carrier Safety Administration to initiate a civil action for violations of Federal Laws.

SUMMARY OF VIOLATIONS

Your company is charged with:

1. One (1) violation of 49 CFR § 382.301(a)- Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.
2. Five (5) violations of 49 CFR § 395.3(b)(2)- Requiring or permitting driver to drive after having been on duty more than 70 hours in 8 consecutive days.

A copy of the documentary evidence collected during the investigation is available from this office. Upon request, the FMCSA will forward a copy of this evidence within a reasonable period of time. For additional details see the attached "Statement of Charges."

NOTICE OF ABATEMENT

This letter also constitutes a Notice of Abatement of all violations. In order to ensure that these violations cease, your company must take the following actions:

1. Do not allow a driver to perform a safety-sensitive function until the driver submits to a pre-employment controlled substances test and a negative test result is obtained, in accordance with 49 CFR Part 382.
2. Establish a system to control drivers' hours of service. Do not dispatch drivers who do not have adequate hours available to complete assigned trips legally. Do not allow drivers to exceed the 10, 15, and 60/70 hour limits in accordance with 49 CFR Part 395.

Failure to abate the cited violations could cause penalties to be increased in future enforcement actions. Under Section 222 of the Motor Carrier Safety Improvement Act of 1999, recurring violations of the same or related acute or critical regulations (violations of the same Part in Title 49 of the Code of Federal Regulations) that result in three or more enforcement actions within a six-year period will cause the maximum penalties allowed by law to be assessed for the third and subsequent enforcement actions. Any violations with a checkmark in the "§ 222 Applied" column in the penalty table below are subject to this "Section 222" provision and the maximum penalties have been assessed. See 49 USC § 521 note, 49 USC § 521(b), 49 USC § 5123, 49 USC Chapter 149, and 49 CFR Part 386, Appendix A.

PENALTY

In accordance with 49 USC §§ 521(b)(2)(D) and 5123(c), the FMCSA must, before assessing a civil penalty, take into consideration the nature, circumstances, extent, and gravity of the violation committed and with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. The civil penalty assessment shall be calculated to induce compliance. These factors will not be considered, however, for violations subject to the Section 222 provision described above.

The FMCSA also is not required by statute to consider these factors in assessing penalties for violations of the commercial regulations. However, in accordance with 49 USC § 14901(c), the FMCSA must, before assessing a civil penalty concerning the transportation of household goods, take

into consideration the degree of culpability, any prior history of such conduct, the degree of harm to shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the civil penalty proceeding, and such other matters as fairness may require.

A listing of the statutes governing maximum and minimum penalties for violations of specific regulations is enclosed.

Given the statutorily mandated items listed above, the FMCSA has assessed a civil penalty as follows:

<u>VIOLATION</u>	<u>TYPE OF VIOLATION²</u>	<u>NUMBER OF COUNTS</u>	<u>ASSESSMENT PER COUNT</u>	<u>§222 APPLIED</u>	<u>TOTAL</u>
382.301(a)	NR	1	\$7,930.00		\$7,930.00
395.3(b)(2)	NR	5	\$10,000.00		\$50,000.00

Accordingly, the total amount assessed by the Federal Government as the result of these violations is \$57,930.

HOW TO REPLY TO THIS NOTICE OF CLAIM

Under 49 CFR Part 386, "Rules of Practice for Motor Carrier Proceedings," you have specific rights with respect to this Notice of Claim. You are advised to read Part 386 carefully and follow the course of action appropriate for you in this case. A copy of Part 386 is attached to this Notice of Claim for your information. Additionally, you may wish to seek legal counsel for answers to any questions in reference to this Notice of Claim or procedures under Part 386. DO NOT call the Federal Motor Carrier Safety Administration Service Center or the Chief Counsel's office for advice or assistance in your defense. You may pursue one or more of the following courses of action:

(1) **PAYMENT OF PENALTY:** The penalty may be paid by a cashier's or certified check for the full penalty amount made payable to the Federal Motor Carrier Safety Administration and mailed to: United States Department of Transportation, Federal Motor Carrier Safety Administration, Eastern Service Center, 10 South Howard Street, Suite 4000, Baltimore, MD 21201. Alternatively, you may pay electronically through our Do-It-Yourself website at <http://diy.dot.gov> by selecting "Federal Motor Carrier Safety Administration," then "FMCSA Fine Payments." Payment should be made within twenty-five (25) days after service of this Notice of Claim.

(2) **REQUEST TO NEGOTIATE PAYMENT TERMS:** If you can show that it would be financially difficult to pay the civil penalty in one full payment, you and/or your legal representative may ask for a monthly payment schedule to settle the claim. This request must be made within twenty-five (25) days after service of this Notice of Claim. You may contact Enforcement Program Specialist John J. Vasconez at 410-962-3096 to ask about a payment schedule. In order to retain any right to a hearing, A WRITTEN REPLY MUST ALSO BE SUBMITTED IN ACCORDANCE WITH 49 CFR SECTION 386.14, AND THE REQUIREMENT TO REPLY TO THIS NOTICE OF CLAIM WILL NOT BE WAIVED BY THE FMCSA.

2) CDL=Commercial Driver's License; FR=Financial Responsibility; HM=Hazardous Materials (the total penalties assessed is per citation, not per number of counts); NO=Notice and Orders; NR=Nonrecordkeeping; R=Recordkeeping; COM=Commerical Regulations.

(3) REQUEST FOR A HEARING: You may request a hearing on the record on any material issues of fact in dispute. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written reply within 15 days after service of this Notice of Claim.

THE SPECIFIC RIGHTS PROVIDED FOR IN 49 CFR § 386.14 WILL BE WAIVED IF YOU FAIL TO FILE A REQUEST FOR A HEARING WITHIN FIFTEEN (15) DAYS AFTER THE SERVICE OF THIS NOTICE OF CLAIM.

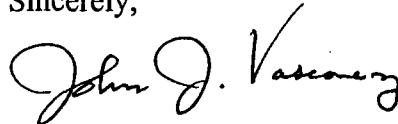
FAILURE TO REPLY TO THE NOTICE OF CLAIM IN THE EXACT MANNER SPECIFIED IN 49 CFR § 386.14 WILL BE TREATED AS IF NO REPLY HAS BEEN FILED. UNDER 49 CFR § 386.14(e), A FAILURE TO REPLY WILL CAUSE THIS NOTICE OF CLAIM TO BECOME THE FINAL AGENCY ORDER IN THE PROCEEDING TWENTY-FIVE (25) DAYS AFTER IT IS SERVED.

A GENERAL DENIAL DOES NOT MEET THE REQUIREMENTS OF 49 CFR § 386.14(b). UNLESS A CONCISE STATEMENT OF FACTS CONSTITUTING EACH DEFENSE IS PROVIDED IN YOUR REPLY, A DEFAULT MAY BE ENTERED AGAINST YOU.

IF YOU DO NOT UNDERSTAND OR ARE CONFUSED ABOUT YOUR RIGHTS AND OBLIGATIONS AS OUTLINED WITHIN THIS NOTICE OF CLAIM, YOU MAY WISH TO SEEK LEGAL ADVICE.

Copies of the procedural regulations, applicable statutes and the Service List are enclosed.

Sincerely,



for

Ronald G. Ashby
Director of Enforcement and Field Services
Federal Motor Carrier Safety Administration

Enclosures

APPLICABLE STATUTES

Section 521(b)(2)(A) of 49 USC provides that any person who is determined to have committed an act that is a violation of regulations issued under subchapter III of chapter 311 (49 USC §§ 31131 et seq.)(except sections 31138 and 31139) or 49 USC §§ 31301 and 31306, or section 31502 of 49 USC, shall be liable for a civil penalty in an amount not to exceed \$10,000 for each offense. No civil penalty shall be assessed under this section against an employee for a violation in an amount exceeding \$2,500 (49 USC § 521(b)(2)(A)).

STATEMENT OF CHARGES

Violation 1 --- 49 CFR 382.301(a) - Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.

CHARGE #1:

On or about 09/23/2001, Z Best, Inc., allowed its driver, Christopher L. Jordan, to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from Brookneal, Virginia to York, Pennsylvania, before the carrier received a negative pre-employment controlled substances test result. Driver, Jordan submitted to a pre-employment controlled substance test on 09/21/2001. The results were furnished by the MRO, Susan Green on 9/25/2001.

Violation 2 --- 49 CFR 395.3(b)(2) - Requiring or permitting driver to drive after having been on duty more than 70 hours in 8 consecutive days.

CHARGE #1:

On or about 10/15/2001, Z Best, Inc., required or permitted its driver, Richard Simmons, to drive a commercial motor vehicle in interstate commerce from Lawrenceville, Virginia to Frederick, Maryland, then to Princess Anne, Maryland. , after the driver had been on duty for 70 hours in 8 consecutive days. The driver drove 3 and 3/4 hours after being on duty for 70 hours.

CHARGE #2:

On or about 10/22/2001, Z Best, Inc., required or permitted its driver, Christopher Jordan, to drive a commercial motor vehicle in interstate commerce from Brookneal, Virginia to Hagerstown, Maryland then to Chambersburg, Pennsylvania, where he reloaded and then drove to New Port News, Virginia (Fort Eustis, Virginia), after the driver had been on duty for 70 hours in 8 consecutive days. The driver drove 7 and 1/2 hours after being on duty for 70 hours.

CHARGE #3:

On or about 10/25/2001, Z Best, Inc., required or permitted its driver, Eugene Gregory, to drive a commercial motor vehicle in interstate commerce from Chambersburg, Pennsylvania to New Port News, (Lee Hall, Virginia) then to Brookneal, Virginia, after the driver had been on duty for 70 hours in 8 consecutive days. The driver drove 7 and 1/2 hours after being on duty for 70 hours.

CHARGE #4:

On or about 10/30/2001, Z Best, Inc., required or permitted its driver, Christopher Jordan, to drive a commercial motor vehicle in interstate commerce from Brookneal, Virginia to Baltimore, Maryland, after the driver had been on duty for 70 hours in 8 consecutive days. The driver drove 5 and 1/4 hours after being on duty for 70 hours.

CHARGE #5:

On or about 10/31/2001, Z Best, Inc., required or permitted it's driver, Teddy Stith, to drive a

STATEMENT OF CHARGES

commercial motor vehicle in commerce from Riverton, Virginia to Williamsburg, Virginia, after the driver had been on duty for 70 hours in 8 consecutive days. The driver drove 11 and 3/4 hours after being on duty for 70 hours. During the day prior (10/30/2001) this driver was used in interstate commerce and again on 11/01/2001.

SERVICE LIST

This is to certify that on December 12, 2001, the undersigned sent, by the method indicated, the designated number of copies of the Notice of Claim to each of the parties listed below.

Each party listed below must receive the designated number of copies of each filing made in this proceeding in the future.

Emory Lucy, President
Z Best Inc
852 Planters Road
Lawrenceville, VA 23868

Original
Certified/ Return Receipt Requested

Craig A. Feister, Division Administrator
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
400 N. 8th Street Suite 750
PO Box 10249
Richmond, Virginia 23240-0249

One Copy
Personal Delivery

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
FMCSA Docket Clerk
Eastern Service Center
10 South Howard Street
Suite 4000
Baltimore, MD 21201

One Copy
U.S. Mail or Electronic Mail



CANTOR ARKEMA & EDMONDS, P.C.
ATTORNEYS & COUNSELORS AT LAW

The First National Bank Building
823 East Main Street
P.O. Box 561
Richmond, Virginia
23218-0561
www.cantorarkema.com

Telephone (804) 644-1400

Neil E. McCullagh
Direct Dial (804) 343-4363
Fax (804) 225-8706
E-Mail: nmccullagh@cantorarkema.com
www.cantorarkema.com

December 26, 2001

BY FACSIMILE AND FEDERAL EXPRESS
(410) 962-2273

Mr. Ronald G. Ashby
Director of Enforcement and Field Services
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
City Crescent Building
10 South Howard Street, Suite 4000
Baltimore, Maryland 21201

Re: Z-Best, Inc.
Case No. VA-02-003-US0060

Dear Mr. Ashby:

Our firm represents Z-Best, Inc. ("Z-Best") in the above-referenced case. This letter is a reply to the Notice of Claim to Z-Best dated December 12, 2001 (the "Notice of Claim").

Z-Best contests the Notice of Claim and requests a copy of all documentary evidence collected during the investigation referenced in the Notice of Claim.

Set forth below in bold type is a verbatim recitation of the violations alleged in the Notice of Claim and, pursuant to the applicable regulations, Z-Best's admissions, denials, and statements of fact constituting each defense.

VIOLATION 1 ---- 49 CFR 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.

CHARGE #1:

On or about 09/23/2001, Z Best, Inc., allowed its driver, Christopher L. Jordan, to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from Brookneal, Virginia, to York, Pennsylvania, before the carrier received a

Exhibit B

negative pre-employment controlled substances test result. Driver, Jordan submitted to a pre-employment controlled substance test on 09/21/2001. The results were furnished by the MRO, Susan Green on 9/25/2001.

Z-Best admits that a Z-Best driver made the trip alleged, but Z-Best denies that Christopher L. Jordan was the driver. The motor vehicle was driven at all times during the trip alleged by Mr. Bernard Simmons. Mr. Jordan never drove for Z-Best until after Z-Best had received a negative controlled substances test result. Z-Best admits the allegations regarding when Mr. Jordan's controlled substance test was taken and when the results were furnished.

VIOLATION 2 ---- 49 CFR 395.3(b)(2) – Requiring or permitting driver to drive after having been on duty more than 70 hours in 8 consecutive days.

CHARGE #1:

On or about 10/15/2001, Z Best, Inc., required or permitted its driver, Richard Simmons, to drive a commercial motor vehicle in interstate commerce from Lawrenceville, Virginia to Frederick, Maryland, then to Princess Anne, Maryland. , after the driver had been on duty for 70 hours in 8 consecutive days. The driver drove 3 and ¾ hours after being on duty for 70 hours.

Z-Best admits the allegations but states that any violation was the result of its good-faith misinterpretation of the regulations. Z-Best misinterpreted the regulations in that it believed the 70-hour limitation period begins to run anew following a weekend in which the driver was not driving.

The Federal Motor Carrier Safety Administration ("FMCSA") has imposed the maximum penalty for this charge, as well as the four other charges stated under Violation 2. Z-Best asserts that the maximum penalty is unwarranted under the factors FMCSA is required to consider before assessing a penalty. The circumstances, extent, and gravity of the violation do not warrant the maximum penalty, as the violation did not result in any actual harm and the 70-hour limit was exceeded by only 3 and ¾ hours. Further, Z-Best's culpability is minor, as the violation resulted from a good-faith misinterpretation of the regulation. In addition, Z-Best's records show that its only history with regard to this kind of violation was one previous violation, which was resolved by payment of a penalty of \$1,410 in October, 1999. Finally, Z-Best simply is unable to pay the maximum penalty for this charge and the other charges stated under Violation 2, and imposition of the maximum penalty will disable Z-Best from continuing to do business.

CHARGE #2:

On or about 10/22/2001, Z Best, Inc., required or permitted its driver, Christopher Jordan, to drive a commercial motor vehicle in interstate commerce from Brookneal, Virginia to Hagerstown, Maryland then to Chambersburg, Pennsylvania, where he reloaded and then drove to New Port News, Virginia (Fort Eustis, Virginia), after the driver had been on duty for 70 hours in 8 consecutive days. The driver drove 7 and ½ hours after being on duty for 70 hours.

Z-Best admits the allegations but states that any violation was the result of its good-faith misinterpretation of the regulations. Z-Best misinterpreted the regulations in that it believed the 70-hour limitation period begins to run anew following a weekend in which the driver was not driving.

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CHARGE #3:

On or about 10/25/2001, Z Best, Inc., required or permitted its driver, Eugene Gregory, to drive a commercial motor vehicle in interstate commerce from Chambersburg, Pennsylvania to New Port News, (Lee Hall, Virginia) then to Brookneal, Virginia, after the driver had been on duty for 70 hours in 8 consecutive days. The driver drove 7 and ½ hours after being on duty for 70 hours.

Z-Best admits the allegations but states that any violation was the result of its good-faith misinterpretation of the regulations. Z-Best misinterpreted the regulations in that it believed the 70-hour limitation period begins to run anew following a weekend in which the driver was not driving.

The Federal Motor Carrier Safety Administration ("FMCSA") has imposed the maximum penalty for this charge, as well as the four other charges stated under Violation 2. Z-Best asserts that the maximum penalty is unwarranted under the factors FMCSA is required to consider

before assessing a penalty. The circumstances, extent, and gravity of the violation do not warrant the maximum penalty, as the violation did not result in any actual harm and the 70-hour limit was exceeded by only 7 and ½ hours. Further, Z-Best's culpability is minor, as the violation resulted from a good-faith misinterpretation of the regulation. In addition, Z-Best's records show that its only history with regard to this kind of violation was one previous violation, which was resolved by payment of a penalty of \$1,410 in October, 1999. Finally, Z-Best simply is unable to pay the maximum penalty for this charge and the other charges stated under Violation 2, and imposition of the maximum penalty will disable Z-Best from continuing to do business.

CHARGE #4:

On or about 10/30/2001, Z Best, Inc., required or permitted its driver, Christopher Jordan, to drive a commercial motor vehicle in interstate commerce from Brookneal, Virginia to Baltimore, Maryland, after the driver had been on duty for 70 hours in 8 consecutive days. The driver drove 5 and ¼ hours after being on duty for 70 hours.

Z-Best admits the allegations but states that any violation was the result of its good-faith misinterpretation of the regulations. Z-Best misinterpreted the regulations in that it believed the 70-hour limitation period begins to run anew following a weekend in which the driver was not driving.

The Federal Motor Carrier Safety Administration ("FMCSA") has imposed the maximum penalty for this charge, as well as the four other charges stated under Violation 2. Z-Best asserts that the maximum penalty is unwarranted under the factors FMCSA is required to consider before assessing a penalty. The circumstances, extent, and gravity of the violation do not warrant the maximum penalty, as the violation did not result in any actual harm and the 70-hour limit was exceeded by only 5 and ¼ hours. Further, Z-Best's culpability is minor, as the violation resulted from a good-faith misinterpretation of the regulation. In addition, Z-Best's records show that its only history with regard to this kind of violation was one previous violation, which was resolved by payment of a penalty of \$1,410 in October, 1999. Finally, Z-Best simply is unable to pay the maximum penalty for this charge and the other charges stated under Violation 2, and imposition of the maximum penalty will disable Z-Best from continuing to do business.

CHARGE #5:

On or about 10/31/2001, Z Best, Inc., required or permitted its driver, Teddy Smith, to drive a commercial motor vehicle in commerce from Riverton, Virginia to Williamsburg, Virginia, after the driver had been on duty for 70 hours in 8 consecutive days. The driver drove 11 and ¾ hours after being on duty for 70 hours. During the day prior (10/30/2001) this driver was used in interstate commerce and again on 11/01/2001.

Mr. Ronald G. Ashby
December 26, 2001
Page 5

Z-Best admits the allegations but states that any violation was the result of its good-faith misinterpretation of the regulations. Z-Best misinterpreted the regulations in that it believed the 70-hour limitation period begins to run anew following a weekend in which the driver was not driving.

The Federal Motor Carrier Safety Administration ("FMCSA") has imposed the maximum penalty for this charge, as well as the four other charges stated under Violation 2. Z-Best asserts that the maximum penalty is unwarranted under the factors FMCSA is required to consider before assessing a penalty. The circumstances, extent, and gravity of the violation do not warrant the maximum penalty, as the violation did not result in any actual harm and the 70-hour limit was exceeded by only 11 and ¾ hours. Further, Z-Best's culpability is minor, as the violation resulted from a good-faith misinterpretation of the regulation. In addition, Z-Best's records show that its only history with regard to this kind of violation was one previous violation, which was resolved by payment of a penalty of \$1,410 in October, 1999. Finally, Z-Best simply is unable to pay the maximum penalty for this charge and the other charges stated under Violation 2, and imposition of the maximum penalty will disable Z-Best from continuing to do business.

Z-Best requests an oral hearing. In this regard, the following is a list of all material facts believed to be in dispute:

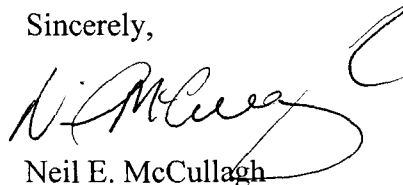
(1) Whether Christopher Jordan was the driver for the trip alleged in Violation 1, Charge # 1.

(2) Whether the maximum penalty should be imposed the violations stated in Violation 2, Charges # 1 – 5.

In accordance with 49 CFR § 386.14(b)(3), please note that Z-Best is willing to negotiate the settlement of the amount claimed in the Notice of Claim.

Finally, I hereby certify that this reply has been served in accordance with 49 CFR § 386.31.

Sincerely,



Neil E. McCullagh

NEM

cc: Mr. Emory Lucy, Z-Best
Grant S. Grayson, Esq.